

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 3 of 1974

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

HEIRS OF PATEL BECHARBHAI GOPALBHAI

Versus

HEIRS OF PATEL FULABHAI PARBHUDAS

Appearance:

Mr. M.C. Shah, advocate for the appellants.

Ms. Rupal Patel with Miss V.P. Shah for Respondents.

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 10/01/97

ORAL JUDGEMENT

1. The appellants in the present Second Appeal under section 100 CPC are the original defendants, whereas the respondents herein are the original plaintiffs.

2. The plaintiffs had filed Civil Suit No.52/71 in the Court of the Civil Judge (Junior Division), Borsad, praying for a decree of redemption in respect of the lands mortgaged with the defendants, and for getting a

document of reconveyance executed by the defendants through the court. The trial court had dismissed the suit, against which the original plaintiffs filed an appeal before the District Court. The appeal was allowed by the District Court and a decree for redemption of the mortgage was passed. It is this judgement and decree which is the subject matter of the present Second Appeal.

3. At this stage it may be noted that the present appeal was filed in the year 1974. The same had come up for hearing before my learned predecessor N.H. Bhatt J., who had passed an order on 4th April 1978. The same being on the record, does not require any elaborate discussion except to note the salient points therein. In the said order a specific note has been made to the effect that learned counsel for both the sides had agreed and conceded at the time of hearing of the present appeal that the fate of this appeal, one way or the other, lies on the finding whether the original defendants are the tenants or not i.e. whether they are "deemed purchasers" or "protected tenants" within the meaning of Bombay Tenancy and Agricultural Lands Act. Without any further and elaborate discussion, suffice it to say that the question of law has also been discussed in the prior order of my learned predecessor, and it has been found that by the amendment in clause (b) of section 70 of the said Act, which is a retrospective amendment, the Mamlatdar would have jurisdiction to decide whether a particular person is or was, or is not or was not a tenant of agricultural land. It is also common ground that the question of such tenancy in respect of agricultural lands is a question which could only be decided by the competent forum constituted under the said Act, and that the Civil Court of ordinary jurisdiction is not competent to decide such an issue. For this reason, under the said order, my learned predecessor framed the relevant issue and referred the same to the Mamlatdar and Agricultural Lands Tribunal, Borsad, for its decision.

4. On receiving the said reference, the Mamlatdar and Agricultural Lands Tribunal, Borsad, registered the same as tenancy Case No.48/78 and decided the same after hearing the parties by its judgement and order dated 30th September 1978. A certified copy of this judgement and order has been placed on record of the present appeal, as directed in the order of my learned predecessor.

5. Obviously the said order would be appealable under section 74 of the said Act. Although learned counsel for the present respondents had made a statement as early as 4th December 1978 (which has been recorded by

the Registry in the form of a submission to the Assistant Registrar) that such an appeal had in fact been preferred before the Gujarat Revenue Tribunal (and/or Collector), till today, when the Second Appeal is taken up for hearing, learned counsel for the respondents is unable to provide any further information as to the fate of the so-called appeal. I may note and observe that the matter was twice adjourned by me to enable the learned counsel for the respondents to ascertain the outcome of the so-called appeal; however, learned counsel is unable to state either way. It, therefore, appears that either no such appeal was filed or the outcome of the appeal was not favourable to the present respondents. In view of the present state of the record I am inclined to proceed on the basis that the judgement and order of the Mamlatdar and ALT stands as it is and is obviously binding on the parties.

6. On a perusal and scrutiny of the said judgement and order in Tenancy Case No.48/78,, it must be particularly noted that a reference to the plaintiffs in the said judgement refers to the plaintiffs in respect of the said Tenancy Case, who are the original defendants so far as the civil suit is concerned. Similarly, the reference to the defendants in the judgement in the Tenancy case refers to the plaintiffs of the civil suit from which the present second appeal arises.

6.1 Suffice it to say that a perusal and scrutiny of the judgement and order of the Mamlatdar and ALT discloses that the said forum has given a finding that the father of the defendants (in the civil suit) would be entitled to the status and rights of "deemed tenant" under section 2-A, and of "protected tenant" under section 3-A of the Bombay Tenancy and Agricultural Lands Act, 1948. Consequently he would be entitled to the benefit of section 4-A of the said Act. The necessary consequence, as found by the said forum, would be that the said person viz. the father of the defendants (in respect of the civil suit) would be "a deemed purchaser" of the land in question as on 1st April 1957, under section 32 of the said Act.

7. In view of these findings recorded by the appropriate forum under the Bombay Tenancy and Agricultural Lands Act, these findings become binding on the civil court, including this court, while hearing the present matter as a second appellate court under section 100 CPC.

8. Under the circumstances since the original

defendants of the second suit are found to have been the "deemed purchasers" of the land in question, the original plaintiffs would have no surviving right on the relevant date to obtain a decree for redemption. Consequently the lower appellate court was manifestly in error in decreeing the suit for redemption of the land in question. In the premises aforesaid, the judgement and decree of the lower appellate court is quashed and set aside.

9. This appeal is accordingly allowed with no order as to costs.
